



February 18, 2011

**Ex Parte**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, D.C. 20554

**Re: CG Docket 10-207 Empowering Consumers to Avoid Bill Shock; CC Docket 09-158 Consumer Information and Disclosure**

Dear Ms. Dortch,

On February 17, 2011, the undersigned of Consumers Union, Free Press, Media Access Project, National Consumers League (NCL) and the New America Foundation (collectively, “public interest attendees”) met with Mark Stone, CGB; Michael Jacobs, CGB; Richard Smith, CGB; and David Tannenbaum, OGC.

The purpose of the meeting was to discuss the questions raised in the record of the above-captioned proceedings regarding the FCC's authority to implement the regulations proposed in the Bill Shock NPRM. In addition, we discussed the competition and innovation questions raised in that proceeding, as well the role of consumer education in relation to the proposed rules.

During the meeting, public interest attendees presented their view regarding several of the arguments raised in the record by industry commenters contending that the Commission has no authority to implement the proposed bill shock rules, and that such rules would violate the First Amendment. Specifically, public interest attendees asserted that the Title III bases of authority cited by the Commission in the NPRM provide ample authority and latitude for the adoption of bill shock rules. In addition, public interest attendees noted that not all consumer protections are common carriage obligations under the Communications Act. Furthermore, they also noted that consumers of mobile data services are frequently required to purchase bundled

service packages including commercial mobile radio service (CMRS) voice, which is a Title II service and thus subject to the Commission's broad consumer protection authority for such services.

The public interest attendees thus explained that the Commission may draw upon its clear authority to implement consumer protection for all services provided by mobile wireless communications service providers, without violating the provisions of Section 332 or any other sections of the Act. In this regard, the public interest attendees cited with approval an *ex parte* presentation filed by Public Knowledge in these dockets (and also in WT Docket No. 08-7) on February 4, 2011. Finally, the public interest attendees indicated their intent to continue analyzing the authority issue in the near future, prior to the conclusion of the bill shock proceeding.

Public interest attendees also argued that claims from the wireless industry that the proposed bill shock rules would violate carriers' First Amendment rights are entirely without merit and should be rejected by the Commission. Public interest attendees noted similar regulations adopted by the Commission that have not violated First Amendment rights, such as Truth-in-Billing requirements that carriers communicate with their customers in a readable format.

The meeting also included discussion of the costs associated with updating carriers' billing systems to comply with the proposed bill shock rules. Public interest attendees indicated that the Commission is best placed to obtain such data, as service providers would undoubtedly insist that such information is confidential. Public interest attendees also expressed their understanding that wireless carriers' billing systems are updated on a continual basis and that those costs should be taken into account when considering any burdens the proposed rules would place on wireless carriers, particularly with regards to real-time monitoring and notification. Public interest attendees also noted that an increased Commission focus on consumer education about usage management tools can be achieved at the same time that common-sense bill shock regulations are put in place. Finally, public interest attendees reiterated that innovation and competition in the industry would not be impeded by the proposed rules since carriers would be free to compete on customer service beyond the minimum requirements.

NCL submits this letter to the Secretary's office today pursuant to Section 1.1206(b) of the Commission's rules, 47 C.F.R. §1.1206(b). Please contact the undersigned should you have any questions regarding this submission

Respectfully submitted,

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National Consumers League

\_\_\_\_\_/s/\_\_\_\_\_  
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Matthew F. Wood  
Associate Director  
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CC: Mark Stone  
Michael Jacobs  
Richard Smith  
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